

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Monique West	Team: Squad #2	CCRB Case #: 201410644	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 10/04/2014 9:00 PM	Location of Incident: Morris Avenue and East 170th Street	Precinct: 44	18 Mo. SOL 4/4/2016	EO SOL 4/4/2016	
Date/Time CV Reported Sat, 10/04/2014 9:39 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/17/2014 2:29 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anderson Ortiz	26151	949424	044 PCT
2. POM Alexis Dejesus	01421	946903	044 PCT
3. LT Enrique Rodriguez	00000	895928	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Enrique Rodriguez	Abuse: Lt. Enrique Rodriguez stopped § 87(2)(b) and § 87(2)(b)	
B.POM Alexis Dejesus	Force: PO Alexis Dejesus pointed his gun at § 87(2)(b)	
C.POM Anderson Ortiz	Force: PO Anderson Ortiz used physical force against § 87(2)(b)	
D.POM Alexis Dejesus	Force: PO Alexis Dejesus struck § 87(2)(b) with a blunt instrument.	

Case Summary

On October 4, 2014, at approximately 9 p.m., Lt. Enrique Rodriguez, PO Alexis DeJesus and PO Anderson Ortiz of the 44th Precinct stopped § 87(2)(b) and § 87(2)(b) on Morris Avenue and East 170th Street in the Bronx (**allegation A**). During § 87(2)(b)'s interaction with the officers, PO DeJesus pointed his gun at § 87(2)(b) (**allegation B**). In the process of arresting them, PO Ortiz allegedly kicked § 87(2)(b) multiple times in his chest and face and PO DeJesus allegedly struck § 87(2)(b) in the head with his handcuffs (**allegations C and D**) (complaint encl. C33-34, CCRB testimony encl. C38-40, IAB statement encl. C13-14). § 87(2)(b) was arrested for § 87(2)(b) (encl. E43). § 87(2)(b)

§ 87(2)(a) Fam. Ct. Act § 381.3

(b)

IAB investigated the force that caused § 87(2)(b)'s injury and found the allegation was unsubstantiated (encl. J5).

Mediation, Civil and Criminal Histories

On December 5, 2014, § 87(2)(b) filed a notice of claim with the City of New York, claiming injuries to his head and neck, and seeking payment of an unspecified amount (encl. F1-3). As a result of the ongoing claim, this case was ineligible for mediation. § 87(2)(b) [§ 86(1)(3)&(4)] [§ 87(2)(g)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) and involving § 87(2)(b) (encl. B7, B7a)
- Lt. Rodriguez has been a member of the NYPD for 25 years, has had 35 previous CCRB allegations involving 17 cases with one substantiated allegation in 2007 for making an improper entry into an apartment. § 87(2)(g)
- PO DeJesus has been a member of the NYPD for six years, has had 20 previous CCRB allegations involving 11 cases with one substantiated allegation in 2011 for frisking an individual without justification. § 87(2)(g)
- PO Ortiz has been a member of the NYPD for four years and has had three previous CCRB allegations, none substantiated, stemming from two incidents (encl. B4). PO Ortiz currently has an open case, #201503978, alleging excessive force and abuse of authority during an April 2014 arrest. It is alleged that he stopped individuals in the same age group as § 87(2)(b) and punched and kicked them while placing them under arrest.

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g)

Explanation of Subject Officer Identification

Lt. Rodriguez was the supervisor on scene and admitted directing his officers to conduct the stop.

§ 87(2)(g)

Recommendations

Allegation A- Abuse of Authority: Lt. Enrique Rodriguez stopped § 87(2)(b) and § 87(2)(b)

It is undisputed that Lt. Rodriguez stopped § 87(2)(b) and § 87(2)(b) and § 87(2)(b) both stated that they had been walking with friends, § 87(2)(b) and § 87(2)(b) when they were stopped. Neither § 87(2)(b) nor § 87(2)(b) could be reached to obtain statements (see IAs encl. H1-10).

Lt. Rodriguez stated that he saw legs of individuals behind a truck but could not see what they were doing at the time he decided to stop them. Lt. Rodriguez admitted that his decision to stop the group that included § 87(2)(b) and § 87(2)(b) was based on his belief that they were breaking into the truck. He stated that this belief was based only on the history of vehicle break-ins in the area and the proximity of the group to the trailer. There had been no reports of vehicle break-ins that day. He made these observations from a moving vehicle, approximately 30 feet away, in a dimly lit area. Lt. Rodriguez's intent upon getting out of his car was to stop and question them regarding their actions. He stated that upon approaching them, he yelled, "Police, don't move." He later added that when he exited his vehicle, he smelled marijuana (encl. D5-6).

An officer may stop a person only if he reasonably suspects that the person is committing, has committed, or is about to commit a crime. *People v. DeBour*, 40 N.Y.2d 210 (1976) (Encl. A1-11). Innocuous behavior, albeit in a high crime area, does not generate a founded or reasonable suspicion that criminality is afoot. *People v. Hampton*, 200 A.D.2d 466 (1994) (encl. A12-14).

§ 87(2)(g)

Allegation B- Force: PO Alexis DeJesus pointed his gun at § 87(2)(b)

It is undisputed that after PO DeJesus ordered the stop, § 87(2)(b) and § 87(2)(b) ran towards PO DeJesus and PO DeJesus pointed his gun at § 87(2)(b). It is undisputed that § 87(2)(b) had a gravity knife on his person at this time.

§ 87(2)(b) corroborated the officers' statements that § 87(2)(b) had his hands in the pocket of his sweater at the time they were stopped. § 87(2)(b) stated that § 87(2)(b) was trying to keep his phone from falling out (encl. C38-39).

PO DeJesus stated that there was a group of females between PO DeJesus, § 87(2)(b) and § 87(2)(b) that caused PO DeJesus to suddenly lose sight of them. Neither § 87(2)(b) nor PO Ortiz mentioned this. PO DeJesus also stated that § 87(2)(b) and § 87(2)(b) continued to run towards him after he drew his weapon and that their hands were out of view at the time he pointed his gun at them, causing him to fear for his safety. § 87(2)(b) and PO Ortiz agreed that § 87(2)(b) and § 87(2)(b) stopped running at this time (encl. D11-12).

An officer has broad discretion to display his firearm whenever he reasonably believes, based upon a totality of circumstances, that his life or the life of another is endangered. Police Department v. Gliner, OATH Index No. 955/00 (Sept. 6, 2000)(encl. A29).

At the time PO DeJesus pointed his weapon at § 87(2)(b) § 87(2)(b) had been running towards him with an unidentified object in his pocket. It was dark outside and the area was dimly lit.

§ 87(2)(g)

Allegation C- Force: PO Anderson Ortiz used physical force against § 87(2)(b)

PO Ortiz acknowledged that, when § 87(2)(b) made repeated attempts to get up from the ground where he was facedown, PO Ortiz pushed his foot down on § 87(2)(b)'s lower back each time. He stated that other than lifting his body to get up, § 87(2)(b) had not been doing anything else with his body or resisting in any other way. It is undisputed that at this time, PO DeJesus was dealing with § 87(2)(b) and PO Ortiz was dealing with § 87(2)(b) on a one to one basis (CCRB statement encl. D17-18).

§ 87(2)(b) alleged that while he was on the ground being apprehended by PO DeJesus, he saw PO Ortiz kick § 87(2)(b) six or seven times in his chest and face (CCRB statement encl. C38-39). § 87(2)(b) stated in his IAB statement that as he got down to the ground, as he was commanded to do, he was kicked once in his head prior to being handcuffed and then once in the rib area after he was in handcuffs. He did not see who kicked him because he was facedown. He claimed to have sustained scrapes to his face and a chipped tooth from having his face pushed into the ground while he was being handcuffed though he did not cooperate with the investigation so no medical records were obtained. He denied resisting arrest or sustaining any injuries from the kicks (encl. C21-22). In his phone statement to the CCRB, § 87(2)(b) stated that an officer matching the description of PO Ortiz kicked him a couple of times. He was then kicked on both sides of his ribs but did not see who did this. PO Ortiz then kicked or pushed his head down onto the ground. His top left front tooth was chipped as a result. He also sustained a bruise on the right side of his forehead and on his nose but was not sure which force caused him to sustain those injuries (encl. C35).

Patrol Guide Procedure 212-08 states that only the amount of force necessary should be used to effect an arrest (encl. A35-36).

§ 87(2)(g)

Team: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date